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GAO

Fact Sheet for the Honorable
Ron Marlenee
House of Representatives

COMPLETED

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SHIPPER RAIL RATES:

Interstate Commerce Commission's Handling of Complaints

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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

RESOURCES, COMMUNITY,
AND ECONOMIC DEVELOPMENT
DIVISION

January 30, 1986

B-221130

The Honorable Ron Marlenee
House of Representatives

Dear Mr. Marlenee:

On February 14, 1985, you requested information on the Interstate Commerce Commission's implementation of the captive shipper protections of the Staggers Rail Act of 1980. As part of your request, you also asked for information on six specific areas of the Commission's activities regarding shipper rate complaints. These areas were

--the current case-load-to-completion-time ratio;

--the ratio of cases settled in favor of railroads over those settled in favor of shippers;

--the total revenue gained and projected income from the current $500 filing fee charged to shippers when filing a complaint;

--the total administrative costs involved in processing a complaint;

--the number of rate changes instituted in the last 4 years; and

--the number of rate hearings that have been held in the last 4 years and which, if any, have been public.

As agreed with your office, we are providing a detailed briefing on the major issues related to the Commission's implementation of the Staggers Rail Act. As requested, this fact sheet contains information about the six specific areas.

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The information contained in the fact sheet was obtained from and discussed with Commission officials. We did not verify the accuracy of the data the Commission provided. As agreed with your office, we are sending copies of this fact sheet to the Interstate Commerce Commission and to other interested parties. If you have any questions regarding the fact sheet, please call me at (202) 275-7783.

Sincerely yours,

Herbert R. McLure

Herbert R. McLure
Associate Director

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SHIPPER RAIL RATES: INTERSTATE COMMERCE COMMISSION'S HANDLING OF COMPLAINTS

BACKGROUND

Rail shippers may file complaints about rail rates with the Interstate Commerce Commission (ICC). A complaint is a formal legal document initiated by a private party who has a grievance against another private party. The complainant generally has the burden of proof in a complaint case.

Once a rate complaint is filed, ICC applies a two-step process to reach a decision. First, the Commission must determine whether it has jurisdiction to investigate the challenged rate. Under the Interstate Commerce Act, the Commission has jurisdiction if the railroad has market dominance over the traffic to which the rate applies.

To determine market dominance, ICC first determines whether the challenged rate results in a revenue-to-variable-cost ratio that exceeds 180 percent. If the rate exceeds 180 percent, the Commission reviews qualitative evidence submitted by the shipper and the railroad about the presence or absence of four types of competition--intermodal, intramodal, product, and geographic. The existence of any of the four types of competition can prove that the railroad is not market dominant over the shipper.

If ICC finds that the railroad is market dominant, it determines whether the challenged rate is reasonable. If the rate is found unreasonable, the Commission may set a reasonable maximum rate for the railroad.

Two offices at ICC are primarily responsible for handling rate complaint cases--the Office of Hearings and the Office of Proceedings. The Office of Hearings determines the type of legal process for cases, holds hearings before an Administrative Law Judge, and reaches an initial decision.

The Office of Proceedings is responsible for obtaining all statements and evidence from the involved parties. In addition, if one of the parties appeals the initial decision to the Commission, the Office of Proceedings handles the administrative and research logistics for the full Commission. The Office of Proceedings prepares recommended decisions in appealed cases and also provides background information to the Commissioners. An appealed case may be decided by the entire Commission or by a division comprised of three Commissioners.

INFORMATION ON THE SIX REQUESTED AREAS

Information was requested for the following areas dealing with ICC activities regarding shipper rate complaints:

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--the current case-load-to-completion-time ratio;

--the ratio of cases settled in favor of railroads over those settled in favor of shippers;

--the total revenues gained and projected income from current $500 filing fee charged to shippers when filing a complaint;

--the total administrative costs involved in processing a complaint (justification for $500 fee);

--the number of rate changes instituted in the last 4 years; and

--the number of rate hearings that have been held in the last 4 years and which, if any, have been public.

Current case-load-to-completion-time ratio

According to the Chief Administrative Law Judge in the Office of Hearings and the Assistant Deputy Director of Rail Services in the Office of Proceedings, ICC does not maintain data on the case-load-to-completion-time ratio. There are constraints, however, on how long ICC may take to decide complaint cases. Specifically, section 10327 of the Interstate Commerce Act stipulates that ICC must complete all evidentiary proceedings for a complaint case within 180 days after the case is assigned to the official hearing the case--usually an Administrative Law Judge (ALJ). The ALJ has 120 days to make an initial decision. If the ALJ needs more time to make a decision, the Commission may grant one extension of 90 days. Additional extensions are authorized if a majority of the Commissioners agree to the extensions and a written report is submitted to the Congress. The Chief Administrative Law Judge told us that, since the Staggers Rail Act was passed in October 1980, Administrative Law Judges have sought and the Commission has granted an average of two or three 90-day extensions each year. He stated that there have been two additional congressional extensions during the same time period.

Ratio of cases settled in favor of railroads over those settled in favor of shippers

Tables 1 and 2 present available information on ICC decisions on market dominance and rate reasonableness cases since the passage of the Staggers Rail Act. We identified these cases by using data bases developed by the Association of American Railroads and ICC and updating them through a review of ICC's documents and discussions with officials in ICC's Office of Hearings and Office of Proceedings. ICC officials told us that

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although a few cases may not be included in the tables, their omission would not distort any analysis that might be made about the pattern of ICC's decisions.

As shown in table 1, ICC has found market dominance in 61 (75 percent) of the 81 cases we identified. As shown in table 2, we found that ICC determined in 40 of the 61 cases (66 percent) where market dominance existed that the railroads had reasonable rates. Sixty-three percent of the cases where the rate was found reasonable have been appealed. ICC found that in 10 cases (16 percent) the railroads had unreasonable rates. Four of these cases have been appealed. Seven cases (11 percent) have not had any rulings on rate reasonableness because the Commission decided to wait until the adoption of its coal rate guidelines before adjudicating these cases.

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Table 1: ICC Decisions on Market Dominance Since Passage of the Staggers Rail Act
As of November 1, 1985

Commodity	Number of cases	Market dominance found		No market dominance found		
		ALJ level[a]	Commission level[b]	ALJ level[a]	Commission level[b]	Type of competition found[c]
Coal	36	7	29[d]	0	0	N/A
Aluminum	12[e]	6	0	3	1[f]	Product competition cited for one case. Product and geographic competition cited for three cases.
Nuclear parts/fuel	6	0	3	0	3[f]	Intra- and intermodal competition cited for three cases, all of which have been appealed.
Foods[g]	5	0	4	0	1[f]	Intra- and intermodal competition cited for one case, which has been appealed.
Chemicals	3	1	0	0	2[f]	Intra- and intermodal competition cited for one case.
Electrical machinery	3	1	2[d]	0	0	N/A
Fuel oil	3	0	0	0	3[f]	Product and geographic competition cited for three cases. One case also cited intermodal competition. One case has been remanded by the circuit court and is now pending.
Iron ore	3	0	2	0	1	N/A
Phosphate rock	3	0	3	0	0	N/A
Scrap iron and steel	3	0	0	2	1	Intra- and intermodal competition cited for three cases.
Others[h]	4	0	3	0	1[f]	Intermodal, product, and geographic competition cited for one case.
Total	81	15	46	5	13	

[a]Includes decisions made by an ALJ.

[b]Includes decisions made at the Office of Proceedings, Review Board, division level, and in civil court.

[c]If market dominance is found, type of competition is not applicable (N/A).

[d]Includes cases where the Commission overturned earlier ALJ decisions of no market dominance.

[e]Includes two cases dismissed before ruling.

[f]Includes cases where the Commission or Review Board overturned earlier ALJ decisions of market dominance.

[g]Includes corn syrup, sugar, and wheat.

[h]Includes clay, fertilizer, pulp and wood, and soda ash.

Source: Interstate Commerce Commission, Association of American Railroads.

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Table 2: ICC Decisions on Rate Reasonableness Since Passage of the Staggers Rail Act
As of November 1, 1985

Commodity	Total cases[a]	Rate found reasonable	Decision appealed & pending[b]	Rate found unreasonable	Decision appealed & pending[b]	Case dismissed before ruling on rate reasonableness	Case pending--no ruling to date on rate reasonableness[c]
Coal	36	23	14	7	3	3	3
Aluminum	7	6	3	0	0	0	0
Nuclear parts/fuel	3	2	2	1	0	0	0
Foods[d]	4	2	2	1	1	0	1
Chemicals	1	1	0	0	0	0	0
Electrical machinery	3	0	0	0	0	0	3
Fuel oil	0	0	0	0	0	0	0
Iron ore	2	0	0	1	0	1	0
Phosphate rock	3	3	2	0	0	0	0
Scrap iron and steel	0	0	0	0	0	0	0
Others[e]	3	3	2	0	0	0	0
Total	62	40	25	10	4	4	7

[a]The total comprises all cases with and without a decision on rate reasonableness.

[b]After the Commission makes a rate-reasonableness decision, the parties may (a) accept this decision and case is administratively closed, (b) privately negotiate a settlement (outside ICC's jurisdiction), or (c) not accept this decision and appeal it. The majority of appealed cases are pending because of the coal rate guidelines (Ex Parte 347 Sub 1).

[c]In a number of cases, the Commission decided to wait to make a rate-reasonableness decision until after serving the coal rate guidelines or receiving more evidence; however, some parties dismissed their complaints in the interim.

[d]Includes corn syrup, sugar, and wheat.

[e]Includes clay, fertilizer, and pulp and wood.

Source: Interstate Commerce Commission, Association of American Railroads.

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Total revenues gained and projected income from current $500 filing fee charged to shippers when filing a complaint

According to the Secretary of ICC, seven formal complaints have been filed since the fee schedule, containing the $500 fee for filing a formal complaint, was published in July 1984. Consequently, the Commission has received $3,500 in revenues from this fee. The Secretary told us that ICC estimated that it would receive about 10 complaints a year, resulting in about $5,000 in annual revenues from this fee.

Total administrative costs involved in processing a complaint (justification for $500 fee)

On October 1, 1985, the Commission issued its most recent decision on its fee schedule. According to data contained in that decision, the cost to the Commission for processing a complaint, as of April 1, 1985, was $2,394.05. As shown in table 3, this figure consists totally of labor costs.

Table 3: ICC Calculation of 1985 Cost For Processing A Complaint Case

Cost element	1984 average hourly wage		1984 average number of hours		1984 total labor cost
Attorney	$19.42	x	66.5	=	$1,291.43
Bureau of Accounts cost analysis	19.03	x	49.0	=	932.28
Total - 1984					$2,223.71
Factor to reflect cost increases					x 1.0766
Total - 1985					$2,394.05

Source: Interstate Commerce Commission.

When the Commission originally proposed its fee schedule in June 1984, the fee for filing a complaint was to be $2,300. Because of concerns about the impact of a $2,300 fee on small shippers, the Commission capped the fee for filing a complaint at $500. The Commission's October 1, 1985, decision kept the $500 cap in place.

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Number of rate changes instituted in the last 4 years.

Railroads make rate changes through tariffs they file with ICC. These tariffs can contain rate increases, rate decreases, and/or changes in the rules under which the service is provided. Table 4 shows the tariffs filed during the last 4 fiscal years. The Secretary of ICC told us that the Commission does identify those tariffs filed that involved a rate increase; however, because the Commission does not need to isolate tariffs involving rate increases, it does not maintain a record of rate increases. According to the Secretary of ICC, the only way to determine how many rate increases have occurred would be to manually review all of the tariffs filed with ICC. As agreed with your office, we did not perform such a review. If a shipper believes a rate increase is excessive, it may file a complaint with the Commission.

Table 4: Rail Tariffs Filed With ICC During Fiscal Years 1982-1985

Fiscal year	Number of rail tariffs
1982	72,929
1983	76,129
1984	49,270
1985	63,687

Source: Interstate Commerce Commission.

The number of rate hearings that have been held in the last 4 years and which, if any, have been public

According to the Chief Administrative Law Judge in the Office of Hearings, complaints are typically handled through the use of written evidence. Hearings may be held if the parties have submitted conflicting evidence. According to the Chief, any hearings that are held are open to the public. Also, according to the Chief, 10 hearings were held during 1985 and 9 hearings were held during 1984. In addition, the Chief told us that data regarding hearings held in previous years are not available.

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